



C O R P O R A T I O N S E R V I C E C O M P A N Y®

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Transmittal Number: 16386027  
Date Processed: 03/19/2017

## Notice of Service of Process

**Primary Contact:** Benjamin R. Edwards  
Lincoln Financial Group  
1300 South Clinton Street  
Fort Wayne, IN 46802

**Electronic copy provided to:** Ms. Debbie Bauermeister  
Ms. Shawn Gross

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**Entity:** The Lincoln National Life Insurance Company  
Entity ID Number 0186956

**Entity Served:** Lincoln National Life Insurance Company

**Title of Action:** Cecilia Short vs. The Lincoln National Life Insurance Co.

**Document(s) Type:** Summons/Complaint

**Nature of Action:** Contract

**Court/Agency:** Bernalillo County District Court, New Mexico

**Case/Reference No:** D-202-CV-2017-01670

**Jurisdiction Served:** New Mexico

**Date Served on CSC:** 03/16/2017

**Answer or Appearance Due:** 30 Days

**Originally Served On:** NM Office of Superintendent of Insurance on 3/14/2017

**How Served:** Certified Mail

**Sender Information:** Donald D. Vigil  
505-247-2020

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Information contained on this transmittal form is for record keeping, notification and forwarding the attached document(s). It does not constitute a legal opinion. The recipient is responsible for interpreting the documents and taking appropriate action.

**To avoid potential delay, please do not send your response to CSC**

2711 Centerville Road Wilmington, DE 19808 (888) 690-2882 | [sop@cscglobal.com](mailto:sop@cscglobal.com)

STATE OF NEW MEXICO  
**OFFICE OF SUPERINTENDENT OF INSURANCE**

Mailing Address: P.O. Box 1689, Santa Fe, NM 87504-1689

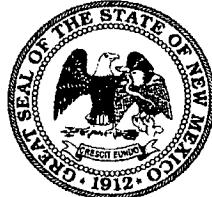
Physical Address: 1120 Paseo de Peralta, Room 428, Santa Fe, NM 87501

Main Phone: (505) 827-4601; Main Fax (505) 827-4734; Toll Free: 1-855-4-ASK-OSI

[www.osi.state.nm.us](http://www.osi.state.nm.us)

**SUPERINTENDENT OF  
INSURANCE**

John G. Franchini – (505) 827-4299



**Service of Process**

Room 432

(505) 827-4241

**DEPUTY SUPERINTENDENT**

Robert Doucette – (505) 827-4439

March 14, 2017

Lincoln National Life Insurance Company  
C/O Corporation Service Company  
123 E. Marcy St. Ste. 101  
Santa Fe, NM 87501

Re: Cecilia Short vs. The Lincoln National Life Insurance Company,  
Cause No. D-202-CV-2017-01670

Dear Mr. President:

In accordance with the provisions of NMSA 1978, Sections 59A-5-31 & 59A-32, enclosed is a copy of a Summons on Complaint; and Complaint for Long Term Disability, Breach of Contract and for Violations of ERISA to Defendant Lincoln National Life Insurance Company on the above styled cause. Service was accepted on your behalf on March 14, 2017.

Respectfully,

A handwritten signature in black ink that reads "John G. Franchini".

John G. Franchini, Superintendent

Enclosure:

CERTIFIED MAIL 7010 0290 0002 3836 4070

## SUMMONS ON COMPLAINT

Second Judicial District Court Bernalillo County, New Mexico Court Address: 400 Lomas Blvd., N.W. Albuquerque, New Mexico 87102 Court Telephone: 505-841-8400	Case Number D-202-CV-2017-01670 Judge Lopez, Victor S.
Plaintiff: CECILIA SHORT v. Defendant: THE LINCOLN NATIONAL LIFE INSURANCE CO.	The Lincoln National Life Insurance Co. c/o Office of Superintendent of Insurance PO Box 1689 Santa Fe, NM 87504-1689

### TO THE ABOVE NAMED DEFENDANT(S): Take notice that

1. A lawsuit has been filed against you. A copy of the lawsuit is attached. The Court issued this Summons.
2. You must respond to this lawsuit in writing. You must file your written response with the Court no later than thirty (30) days from the date you are served with this Summons. (The date you are considered served with the Summons is determined by Rule 1-004 NMRA.) The Court's address is listed above.
3. You must file (in person or by mail) your written response with the Court. When you file your response, you must give or mail a copy to the person who signed the lawsuit.
4. If you do not respond in writing, the Court may enter judgment against you as requested in the lawsuit.
5. You are entitled to a jury trial in most types of lawsuits. To ask for a jury trial, you must request one in writing and pay a jury fee.
6. If you need an interpreter, you must ask for one in writing.
7. You may wish to consult a lawyer. You may contact the State Bar of New Mexico for help finding a lawyer at [www.nmbar.org](http://www.nmbar.org); 1-800-876-6657; or 1-505-797-6066.

Dated at \_\_\_\_\_, New Mexico, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.  
3/9/2017

JAMES A. NOEL  
CLERK OF THE DISTRICT COURT

By:

Deputy Clerk



Attorney for Plaintiff  
DONALD D. VIGIL, P.C.  
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STATE OF NEW MEXICO  
COUNTY OF BERNALILLO  
SECOND JUDICIAL DISTRICT

CECILIA SHORT,

Plaintiff,

D-202-CV-2017-01670

vs.

THE LINCOLN NATIONAL LIFE INSURANCE CO.,

Defendant.

**COMPLAINT FOR LONG TERM DISABILITY,  
BREACH OF CONTRACT AND FOR VIOLATIONS OF ERISA**

Plaintiff Cecilia Short, by and through her attorney, Donald D. Vigil, P.C., states as to her causes of action against Defendant The Lincoln National Life Insurance Co., as follows:

**INTRODUCTION**

1. This case arises under the Employment Retirement Income Security Act of 1974 as amended, 29 U.S.C. §1001 et. seq. ("ERISA").

**PARTIES**

2. Cecilia Short, hereinafter referred to as the Plaintiff, is a resident of Bernalillo County, New Mexico.

3. On information and belief, Defendant The Lincoln National Life Insurance Co., hereinafter referred to as the Defendant, is a foreign corporation, having its principal place of business in North Carolina. Defendant regularly does business in Bernalillo

County and New Mexico and, at all times material herein, was engaged in trade of commerce as defined by Section 57-12-2 NMSA 1978.

4. Upon information and belief, its policy provisions are administered by Defendant.

#### **JURISDICTION AND VENUE**

5. Because this is a claim for ERISA LTD benefits, the case is governed by ERISA 29 U.S.C. § 1132(f) as outlined more fully below, and for that reason, jurisdiction and venue are proper in this Court.

#### **FACTUAL ALLEGATIONS**

6. Plaintiff was employed with REDW, LLC until April 4, 2013, when she became disabled.

7. Beginning in approximately April of 2013, Plaintiff's physical condition prevented her from completing tasks associated with her employment. Her sickness and ill health made her unable to work for REDW, LLC, and prevented her from performing every duty pertaining to her occupation for remuneration or profit.

8. Plaintiff left her employment with REDW, LLC, due to her inability to perform work as a result of her disability.

9. Plaintiff applied to Defendant for disability benefits under Defendant's Long Term Disability Benefit Plan ("the Plan"), in which she was a covered participant.

10. During that time frame and continuing thereafter, Plaintiff's condition has not improved and she has aged. As of the date of this complaint, Plaintiff is 62 years old.

11. During that time frame, no doctor or other medical provider has released Plaintiff to return to work.

12. Plaintiff went through Defendant's administrative process and Defendant made a final determination on February 2, 2017, that Plaintiff was not disabled.

#### **I -BREACH OF FIDUCIARY DUTY UNDER ERISA**

13. In the event that it is determined that this matter is governed solely by ERISA, then the following is being pleaded in the alternative:

14. Defendant owed Plaintiff the fiduciary duty under ERISA to administer the Plan solely in the interest of the Plan's participants and beneficiaries. ERISA §404(a)(1)(A), 29 U.S.C. §(a)(1).

15. By failing to pay Plaintiff her correct, full benefits due under the Plan, Defendant has administered the Plan for its benefit, not solely in the interest of Plaintiff and other Plan participants, and thereby has violated its above fiduciary duty under ERISA.

16. As a result of this breach, Defendant and its Plan administrators are jointly and severally and personally liable to Plaintiff.

#### **II-PAYMENT OF BENEFITS UNDER 29 U.S.C. § 1132(a)(1)(B)**

17. As a covered participant in Defendant's Plan, Plaintiff is empowered to bring a claim under 29 U.S.C. § 1132(a)(1)(B) to recover benefits due to her under the terms of her plan, to enforce her rights under the terms of the plan, or to clarify her rights to future benefits under the terms of the Plan since Defendant has wrongfully denied her

claim and has not paid Plaintiff any long term disability benefits due to her under the Plan.

### **III - ATTORNEY'S FEES UNDER ERISA**

18. Defendant's conduct in this action is in the interests of all Plan participants, and the relief granted hereunder will benefit all such participants.

19. Defendant is able to satisfy an award of attorney's fees to Plaintiff.

20. Such an award would deter Defendant and others from so acting under similar circumstances.

21. Defendant's position and conduct were without merit during a period of extreme personal distress and disability for Plaintiff.

22. Defendant is entitled to recover reasonable attorney's fees and costs of this action, pursuant to Section 502(g)(1) of ERISA, 29 U.S.C. §1132 (g).

### **IV- CLAIMS FOR RELIEF**

#### **FIRST CLAIM FOR RELIEF**

23. Defendant's actions, as set out in this Complaint, denied Plaintiff her full and correct benefits under the Plan and constitute breach of contract.

#### **SECOND CLAIM FOR RELIEF**

24. Defendant's actions, as set out in this Complaint, breached the fiduciary duty under ERISA to administer the plan solely in the interest of the Plan's participants and beneficiaries.

**WHEREFORE**, Plaintiff respectfully prays that this Court:

- A. Grant judgment on all of her claims.
- B. Order that Defendant pay to Plaintiff the correct and full benefits due under the Plan.
- C. Award Plaintiff reasonable and compensatory damages in an amount to be determined at trial, as a result of Defendant's failure to pay Plaintiff's correct, full benefits under the Plan; and for Breach of Defendant's fiduciary.
- D. Award Plaintiff the costs of this action and her attorney's fees as provided by law, and;
- E. Award Plaintiff such other and further relief as this Court deems just and equitable.

Respectfully submitted,

DONALD D. VIGIL, P.C.

By Donald D. Vigil  
Donald D. Vigil  
Attorney for Plaintiff  
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